

STATEMENT OF FACTS

Summary

1. AmSouth Bancorporation and AmSouth Bank (hereinafter collectively referred to as “AmSouth” or “the Bank”) violated federal laws and regulations governing the filing of suspicious activity reports (“SARs”) by (1) failing to report suspicious transactions, and (2) failing to report suspicious transactions in a timely manner, and (3) failing to report suspicious transactions in an accurate manner, involving certain accounts at AmSouth Bank. One of these SAR violations involved a scheme by Louis D. Hamric and Victor G. Nance involving fraudulent promissory notes maintained at AmSouth’s Custody Services Department.

2. AmSouth’s conduct which violated federal laws and regulations governing SAR filing includes, but is not limited to, the following: (a) Corporate Security employees did not file SARs in certain instances because AmSouth had not suffered a loss, even though they should have been aware that the suspicious conduct plainly warranted the filing of SARs; (b) AmSouth's former in-house counsel assigned responsibility for pending or threatened civil litigation matters did not report certain transactions which he should have known were suspicious and required the filing of a SAR; and (c) AmSouth Corporate Security employees did not file SARs in certain instances where law enforcement was already aware of one or more of the suspects involved in the activity, even though they should have known that the suspicious conduct plainly warranted the filing of SARs.

3. By its conduct set forth in paragraph 2 and its conduct described in this Statement of Facts, AmSouth failed to prevent the use of its banking services by certain individuals engaged in unlawful conduct, including the fraudulent scheme by Hamric and Nance.

4. In addition, AmSouth failed to produce timely certain documents as required by law in response to subpoenas issued between April 2002 and June 2003 by the federal grand jury in the Southern District of Mississippi investigating the Hamric and Nance scheme.

5. AmSouth failed to provide sufficient information to the Federal Reserve Bank of Atlanta ("FRB Atlanta") during its targeted reviews of AmSouth's Wealth Management Business.

Legal Background

6. AmSouth Bank is a financial institution organized, licensed and doing business under the laws of the United States and the State of Alabama.

7. AmSouth is a "financial institution" as defined in 31 U.S.C. § 5312 and 31 C.F.R. § 103.11(n)(l); a "bank" as defined in 31 C.F.R. § 103.11(c); an "insured bank" as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(h)); and a "state member bank" of the Federal Reserve System (12 U.S.C. § 1813(d)).

8. Three essential laws establish the basic anti-money laundering obligations of banking organizations in the United States: the Bank Secrecy Act ("BSA"), 31 U.S.C. § 5311 *et seq.*; the Money Laundering Control Act of 1986 (codified in relevant part at 18

U.S.C. §§ 1956 and 1957); and the USA PATRIOT Act of 2001, which significantly amended both laws. As set forth in 31 U.S.C. §§ 5318(a)(2) and 5318(h) and 31 C.F.R. § 103.20, banking organizations are required to establish programs to guard against their use for money laundering which, at a minimum, include the following: (a) written, definite internal policies, procedures and controls; (b) the designation of a compliance officer; (c) an ongoing employee training program; and (d) an independent audit function to test programs. AmSouth also is required to report suspicious activity to law enforcement and regulators¹ as set forth in 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18 and the reporting rules of the Board of Governors of the Federal Reserve System (“the Federal Reserve Board”).² All SARs filed by banking organizations are required to be accurate and timely,³ and to provide a complete description of the suspicious activity involved. In order to resolve these allegations by the United States Attorney for the Southern District of Mississippi, AmSouth agrees to the filing of the Information charging AmSouth with a violation of these laws and regulations for failure in certain

¹ The Financial Crimes Enforcement Network (“FinCEN”), a bureau of the Department of Treasury, administers the BSA on behalf of the Secretary of the Treasury and serves as the administrator of the database containing BSA reports filed by financial institutions. The BSA imposes a variety of record keeping and reporting requirements on certain financial institutions, including the duty to report suspicious activities.

² AmSouth Investment Services (“AIS”), a subsidiary of AmSouth Bancorporation, is an investment advisor regulated by the United States Securities and Exchange Commission (“SEC”). AmSouth Bancorporation reports suspicious activity on behalf of AIS.

³ FinCEN’s regulations governing SAR filings by banks require SARs to be filed “no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR.” 31 C.F.R. § 103.18(b)(3).

areas to file SARs, failure to file accurate SARs, and failure to file SARs in a timely manner.

The Hamric Matter

9. In the spring of 2002, the United States Attorney's Office for the Southern District of Mississippi, along with a number of federal and state agencies, began an investigation of a fraudulent promissory note scheme perpetrated by Louis D. Hamric, II, a licensed attorney, Victor G. Nance, a registered investment adviser employed by Mutual of New York ("MONY"), and various other individuals. In essence, Hamric would issue a Promissory Note to each investor promising to pay a very high interest rate for one year. Hamric had little, if any, contact with the actual investors. Various "promoters" of the scheme, including Nance, would bring investors to Hamric and receive a commission for their services. Hamric told Nance that he needed a "block" of \$10 million to participate in a "trading program" that would provide returns through the promissory notes of up to 25% annually. Nance, a registered investment advisor representative, convinced over 40 of his clients to invest in Hamric's program by making numerous misrepresentations to them about the nature and risk of the investment. Many of these investors were retired and had their life savings invested with Nance.⁴

⁴ Victor Nance pled guilty to a money laundering charge, 18 U.S.C. § 1957, in connection with this scheme and is currently serving a 10-year sentence in the custody of the Federal Bureau of Prisons. Hamric paid Nance over \$4 million in "commissions" for finding investors. Louis Hamric pled guilty to money laundering conspiracy, 18 U.S.C. § 1956(h), and is awaiting sentencing.

10. After Nance assured Hamric that he could provide the \$10 million, both Hamric and Nance approached AmSouth⁵ to seek help in dealing with the large number of investors, many of whom had funds invested in individual retirement accounts (“IRAs”). Hamric and Nance misrepresented to AmSouth that the business venture involved construction of medical clinics overseas. In August 2000, after Hamric and Nance had spoken with several AmSouth officers, AmSouth agreed to perform, and performed, the following custodial services for Hamric and Nance, for a fee of \$2,000 per year per account:⁶

- (i) AmSouth established a custodial trust account, which could be designated as an IRA if requested, for each person for whom Hamric and Nance provided completed new account documents;⁷
- (ii) Upon receipt of customer funds into each custodial trust account, AmSouth transferred all funds to an AmSouth money market account controlled by both Hamric and Nance, and accepted into each custodial trust account a Promissory Note, issued by Hamric;⁸

⁵ AmSouth did not perform adequate due diligence with regard to Hamric or Nance, who had been prior customers of the Bank.

⁶ Hamric orally agreed to pay the fee for each custodial account established on behalf of Nance’s investors.

⁷ AmSouth provided blank account opening documents to Hamric and Nance and entrusted them to complete and return the documents to AmSouth for a custodial trust account to be opened. AmSouth did not question the existence or identity of any of the persons who were signing the forms.

⁸ Hamric and Nance prepared a “Direction of Investment” form, which each account holder was required to complete and sign. The purpose of the form was to instruct AmSouth how much each account holder wished to invest in a Hamric Promissory Note. AmSouth did not follow the instructions on the Direction of Investment forms for the overwhelming majority of Nance’s clients. Instead, AmSouth transferred all funds deposited into each custodial trust account to the

- (iii) AmSouth distributed interest payments, on a monthly basis, to each custodial trust account upon receipt of a check from Hamric and a spreadsheet from Nance directing how much money should be credited to each account; and
- (iv) AmSouth provided a copy of each custodial account holder's bank statement to both Hamric and Nance on a quarterly basis, without the knowledge or consent of custodial account holders.

11. When the customer chose to reinvest, upon the maturity of the Promissory Notes, AmSouth agreed, without the knowledge of any of the account holders, to "net" the proceeds of the old note against the new one, and send Hamric the difference.

12. Beginning in early 2001, several other "promoters" brought a second wave of investors into the Hamric scheme, and AmSouth held promissory notes promising to pay these new investors as much as 25% interest monthly. Although a note promising such interest is suspicious on its face, AmSouth did not question the terms or nature of any of these promissory notes.

13. By early 2002, Hamric had stopped sending interest payment checks to AmSouth. On March 13, 2002, AmSouth sent a letter to each investor informing them that six (6) checks sent by Hamric in January had been returned unpaid, that AmSouth had mistakenly sent interest payments to certain custodial account holders, and that AmSouth had demanded reimbursement from Hamric in the amount of \$119,013.50. AmSouth stated that "it may be necessary for those account holders that received direct

money market account controlled by both Hamric and Nance. No AmSouth employee could explain why AmSouth disregarded the instructions on the Direction of Investment forms and instead transferred all of the funds out of each custodial trust account and into the Hamric/Nance money market account.

distributions in 2002 to refund such distributions,” in the event that the money could not be recovered from Hamric. AmSouth then advised its account holders that the reason for the letter was to inform them of Hamric’s delinquencies so that the account holders could take any action they deemed necessary.

14. Without AmSouth’s participation through, among other things, the failure of one, or more, AmSouth managers to properly question whether the Hamric and Nance schemes were fraudulent, Hamric and Nance would not have succeeded in their schemes pursuant to which they attracted a total of approximately \$20 million in fraud proceeds, caused those proceeds to be deposited into AmSouth accounts, and transferred those proceeds, in violation of 18 U.S.C. §§ 1956 and 1957, among and out of those accounts.

The Hamric Grand Jury Investigation

15. When Hamric failed to pay interest owed to the investors, the fraudulent promissory note scheme fell apart, triggering a number of civil lawsuits against individuals (Hamric, Nance and others) and institutions, including MONY⁹ and AmSouth. All or almost all of these suits have been settled. The scheme also became the subject of several investigations by state and federal authorities, including a federal grand jury investigation in the Southern District of Mississippi.

16. Beginning on April 29, 2002, and concluding just prior to June 4, 2003,¹⁰ eight federal grand jury subpoenas were issued to AmSouth. These subpoenas requested

⁹ MONY terminated Nance in June of 2001.

¹⁰ Hamric and Nance were indicted on June 4, 2003.

all documents relating to the Hamric and Nance promissory note scheme, including all documents for any custodial trust accounts opened by either Hamric or Nance on behalf of an account holder; all documents for any bank accounts held by Hamric or Nance and various others associated with the scheme; and all internal and external communications between any AmSouth employee and Hamric, Nance or any custodial trust account holder.

17. In responding to these grand jury subpoenas, AmSouth (i) failed to timely produce certain documents called for by these subpoenas; (ii) failed to produce certain documents in the manner they were kept in the regular course of business as required by the subpoenas; and (iii) failed to locate and produce certain documents called for by the subpoenas until AmSouth was targeted in this criminal investigation.

18. AmSouth's outside counsel¹¹ assumed certain responsive documents had been produced even though they had not been produced. Inside counsel overseeing the production failed to search his own files even though they contained documents responsive to the subpoenas. AmSouth's inside counsel was aware, or should have been aware, of other AmSouth employees who had documents directly responsive to one or more of the federal grand jury subpoenas, but he did not request any documents from these employees.

¹¹ All references to AmSouth's outside counsel in this document refer to counsel it employed prior to September 24, 2003 at which time AmSouth replaced this counsel with new Mississippi counsel, and later retained Washington, DC based counsel, in connection with the criminal investigation that is the subject of the Information and Deferred Prosecution Agreement filed in conjunction with this Statement of Facts.

19. AmSouth Custody Services Department employees, who were made aware of the federal grand jury subpoenas, failed to provide all documents in their possession which were responsive to one or more federal grand jury subpoenas.

20. Through the course of the investigation and through grand jury subpoenas to other sources, certain AmSouth documents became available to federal investigators, including, but not limited to, the AmSouth account holders' bank statements, which were discovered in Hamric's office. Attorneys for the government had discussions with AmSouth's outside counsel concerning the discovery of Bank documents from other sources that had not been produced by AmSouth. AmSouth's outside counsel's responses to these concerns were misleading and inadequate given AmSouth's legal obligations with respect to the grand jury subpoenas. Even after many discussions and other communications between AmSouth's outside counsel and attorneys for the government, AmSouth still failed to produce all responsive documents in a timely manner.

21. Although AmSouth ultimately produced all of these documents after it became the subject of a criminal investigation,¹² the delays in production are legally inexcusable. Given its failures in responding to these numerous grand jury subpoenas, AmSouth has revised its policies and procedures for responding to such subpoenas and

¹² On September 24, 2003, AmSouth employed new outside counsel who began discussions with the United States Attorney's Office for the Southern District of Mississippi concerning AmSouth's criminal exposure. AmSouth was formally advised that it was a target of a criminal investigation on November 17, 2003.

will devote additional resources to ensure full and timely responses to all grand jury subpoenas.

Suspicious Activity Reports

22. All financial institutions are required by federal statutes and regulations to report suspicious activity to law enforcement, banking regulators, and FinCEN. The SAR filing form contains instructions that detail the legal and regulatory requirements for reporting suspicious activity. Suspicious activity must be reported in a timely manner in order for the reporting to be both helpful and useful to law enforcement authorities and regulatory agencies. The FinCEN regulations governing SAR filings contain a time requirement:

A bank is required to file a SAR no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a bank may delay filing a SAR for an additional 30 calendar days to identify a suspect. **In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.** In situations involving violations requiring immediate attention, such as, for example, ongoing money laundering schemes, the bank shall immediately notify, by telephone, an appropriate law enforcement authority in addition to filing timely a SAR.

31 C.F.R. § 103.18(b)(3) (emphasis added). The Federal Reserve Board has issued SAR regulations containing a substantially similar provision. See 12 C.F.R. § 208.62(d).

23. All SARs are stored in a database administered by FinCEN which may be accessed by law enforcement and certain regulators. This comprehensive database is invaluable to law enforcement in the investigative process, in part for determining whether criminal suspects might be engaging in criminal activity in more than one financial institution and/or more than one jurisdiction.

Hamric SAR

24. AmSouth officers and employees at seven different branches in four separate states, including its main office in Birmingham, Alabama, had contacts with Hamric and/or Nance or their customers in connection with their “Ponzi” scheme. These contacts occurred over a time period spanning nearly two years. At least one¹³ of these AmSouth employees suspected that Hamric was involved in a possibly illegal scheme and reported these concerns to AmSouth’s legal department and to AmSouth Corporate Security. These departments, in conjunction with AmSouth’s management, had a legal obligation to report that Hamric might be operating a “Ponzi” scheme, and AmSouth failed to timely file a SAR.

25. The SAR that was ultimately filed reporting the Hamric scheme was filed nearly two years after the date that an AmSouth employee initially detected or should have detected the suspicious activity, and several months after AmSouth learned that law enforcement was investigating Hamric. The Hamric SAR, by characterizing the suspicious activity as check fraud and by understating the amount involved, failed to fully and accurately describe the criminal activities of Hamric.¹⁴

¹³ Many of those employees did not recognize any reportable suspicious activity because they did not receive the necessary training from AmSouth to recognize such activity as suspicious.

¹⁴ AmSouth's legal department, including its then-General Counsel reviewed the Hamric SAR after it was filed and found it sufficient.

Other Suspicious Activity Reports

26. AmSouth unlawfully failed to file SARs in a timely fashion, or at all, in the instances identified in Exhibit 1.¹⁵ AmSouth has now filed SARs with respect to each of these matters. The following are some examples of matters in which suspicious activity occurred in various AmSouth bank accounts, and SARs should have been filed:

- Terry Dowdell, from Charlottesville, Virginia, was indicted for running a global “Ponzi” scheme involving over \$120 million. The SEC began investigating Dowdell at least by December of 2000, when it sent several subpoenas to AmSouth Bank requesting information on Dowdell’s bank accounts. By March of 2001, Dowdell had raised at least \$29 million, most or all of which was deposited into his AmSouth bank account in Florida. The SEC filed a complaint against Dowdell in November, 2001, and publicized this suit on its website. Dowdell was also being investigated by criminal authorities, and was indicted and arrested in June, 2002, for his prime bank fraud scheme. AmSouth had a duty to ask Dowdell about the suspicious origin of the millions of dollars he was putting into his AmSouth accounts, and it failed to do so, even after AmSouth received numerous regulatory and law enforcement subpoenas on those accounts. AmSouth did not learn of Dowdell’s arrest until January, 2003, through the World Check service. Even after articles began appearing in newspapers and magazines concerning Dowdell’s illegal activities, for which he had been indicted, AmSouth did not file a SAR detailing the suspicious activity occurring in Dowdell’s AmSouth accounts. Contrary to federal law and regulations, AmSouth determined that public disclosure in the media that law enforcement was investigating Dowdell relieved it of an obligation to file a SAR. AmSouth now acknowledges that a SAR should have been filed, and recently has filed a SAR.
- Judge Howard Butler, of Rockwood, Tennessee, committed suicide after allegations that he embezzled over \$450,000 from the City of Rockwood’s AmSouth account. That account required two signatures in order for checks to be valid. After the city announced an investigation into whether Judge Butler had misappropriated funds, it made a demand on AmSouth for at least a portion of these funds because many of the checks cashed by Judge Butler had plainly insufficient endorsements. Even after confirming the improper endorsements, AmSouth did not file a SAR in this matter

¹⁵ This exhibit shall be filed under seal with the Court due to the customer information it contains.

because it concluded that no Bank employee had engaged in any misconduct and because, according to AmSouth's Chief of Security, "Judge Butler is dead." Other participants in the scheme were identified by law enforcement and charged in the scheme. AmSouth had a duty to report the suspicious (and confirmed) illegal activity of Judge Butler and others involved in the scheme, and it failed to do so. AmSouth now acknowledges that a SAR should have been filed in this matter, and recently has filed a SAR.

- For a seven year period beginning in 1992, Robert Humber, vice president of the Citizens Bank of Fayette, Alabama, used wire transfers from the Citizens Bank account at the Federal Reserve Bank of Atlanta to put over \$18 million into his personal account at AmSouth Bank. Humber then invested many of these funds with AmSouth's broker-dealer subsidiary, AIS. AmSouth did not question the suspicious amounts of money coming into Humber's bank account directly from another bank's Federal Reserve account. When Citizens Bank and law enforcement notified AmSouth about the fraud, AmSouth agreed to freeze all of Humber's accounts. AmSouth failed to recognize and report the activity in Humber's accounts as suspicious, at least by the time it was notified by law enforcement and agreed to freeze those accounts. AmSouth now acknowledges that a SAR should have been filed in this matter, and recently has filed a SAR.
- Another matter involved an AmSouth Investment Services ("AIS") employee who allegedly committed fraud in AIS clients' accounts by, among other things, forging customer signatures on numerous documents. AmSouth reported this employee's misconduct to the National Association of Securities Dealers ("NASD"). AmSouth also had a duty to report what it knew to be suspicious activity by its own employee to FinCEN, and it failed to do so. AmSouth now acknowledges that a SAR should have been filed in this matter, and recently has filed a SAR.

27. AmSouth management had a duty to recognize suspicious activity and, once recognized, to file SARs in a timely manner and accurately report the suspicious activity. AmSouth failed in this duty, as set forth in Exhibit 1. AmSouth's failure is due, at least in part, to the following practices which violated the applicable statutes:

- When law enforcement already was aware of one or more potential defendants, AmSouth Corporate Security, in many instances, did not file a SAR.
- When AmSouth had been sued or anticipated civil litigation, the responsible AmSouth in-house counsel, often did not evaluate the necessity for filing a SAR.

- When AmSouth did not suffer a loss, AmSouth Corporate Security, in many circumstances, did not file a SAR.

28. AmSouth management failed (a) to sufficiently learn and abide by federal rules and regulations governing SAR filing; and (b) to properly train AmSouth employees with respect to the Bank's legal obligations to recognize and report suspicious activity.

END OF THE STATEMENT OF FACTS